

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK: PART 48

IN RE: OPIOID LITIGATION

INDEX NO.: 400000/2017

March 10, 2020
Central Islip, New York

MINUTES OF PROCEEDING

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Supreme Court Justice

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THE CLERK: Supreme Court, State of New York, County of Suffolk, Part 48 is now in session, the Honorable Jerry Garguilo presiding.

Good morning, Judge.

THE COURT: Good morning. Please be seated.

THE CLERK: On the Hearing Calendar, In Re: Opioid Litigation, Index Number 400000 of 2017.

Counsel, your appearances, please.

MR. NACHMAN: David Nachman, for the State of New York.

MS. DEROCHE: Mandy DeRoche, for the State of New York.

MR. REISMAN: Michael Reisman, State of New York.

MS. CONROY: Jayne Conroy, Suffolk County.

MR. SHKOLNIK: Hunter Shkolnik, Nassau County.

MR. HANLY: Paul Hanly, Suffolk County.

MR. NAPOLI: Paul Napoli, Nassau County.

MS. MAINIGI: Good morning, your Honor.

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Enu Mainigi, Steve Pyser, Ashley Hardin,
Williams & Connolly, for Cardinal Health.

MS. STRONG: Good morning. Sabrina
Strong, of O'Melveny & Myers, on behalf of
Johnson & Johnson and Jansen Pharmaceuticals.

THE COURT: Good morning.

MR. SCHMIDT: Good morning, your Honor.
Paul Schmidt, Covington & Burling, on behalf
of McKesson.

THE COURT: Good morning.

MR. NICHOLAS: Good morning. Bob
Nicholas and Mike Salimbene, for Amerisource.

THE COURT: Good morning.

MR. STOFFELMAYR: Good morning. Kaspar
Stoffelmayr, for Walgreens.

MS. PATTERSON: Good morning, your
Honor. Nancy Patterson for Teva, Actavis and
Cephalon.

MR. BARTLE: Good morning, your Honor.
Harvey Bartle for Teva, Actavis and Cephalon.

MS. WELCH: Good morning, your Honor.
Donna Welch, for Allergan.

MR. PYSER: Good morning, your Honor.
Steven Pyser, for Cardinal Health.

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2 MR. SALIMBENE: Good morning, your
3 Honor, Mike Salimbene.

4 Good morning, your Honor. John Bueker
5 on behalf of Mallinckrodt.

6 THE COURT: Good morning.

7 MR. O'CONNOR: Andrew O'Connor.

8 THE COURT: Good morning, everybody.

9 Anybody here today on behalf of
10 Rochester?

11 MR. SHAIMAN: Good morning, your Honor.
12 David Shaiman.

13 THE COURT: Just step up for a second.
14 It's not going to be long, believe me.

15 Your appearance.

16 MR. SHAIMAN: David Shaiman, Allegaert
17 Berger & Vogel.

18 THE COURT: Okay. You have a petition
19 pending, I think that's returnable tomorrow.

20 MR. SHAIMAN: It is.

21 THE COURT: Is there an opposition to
22 that file?

23 MR. SHAIMAN: It was filed last night,
24 your Honor.

25 THE COURT: Okay. Are you going to

1 In re Opioid 8

2 respond?

3 MR. SHAIMAN: I don't believe we had one
4 under the Order to Show Cause.

5 THE COURT: Beg your pardon? Say it
6 again.

7 MR. SHAIMAN: I don't believe we had one
8 under the Order to Show Cause.

9 THE COURT: Okay. It was brought by
10 Order to Show Cause but --

11 MR. SHAIMAN: Yes.

12 THE COURT: -- I do have the discretion
13 to allow it. I don't see any reason to it.
14 That will be marked submit tomorrow. There's
15 no need for an appearance.

16 MR. SHAIMAN: No need for an appearance,
17 understood.

18 THE COURT: So if you want to leave --
19 stick around a little bit.

20 MR. SHAIMAN: Well...

21 THE COURT: Just a little bit.

22 I'm going to go by sequence number.
23 Hopefully you can follow it.

24 The Court has drafted and edited and in
25 the process of final edits of the following

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petitions: That's motion sequence 144,
motion sequence 153, motion sequence 154,
sequence 156, sequence 158, sequence 161 and
sequence 162. It's also, what I call the
cluster sequences, that deal in the forties
and fifties, they are still in the
preparation stage.

I received a call yesterday to attend a
meeting with the Administrative Judge in this
building. During the course of the
administrative meeting with the
Administrative Judge in this building I was
conferenced into a phone call with Judge Vito
Caruso. For those of you not familiar, Judge
Caruso is the Administrative Judge for all
trial courts in the State of New York, with
the exception of New York City.

I expect to hear sometime today -- now,
of course, as soon as I hear you'll hear --
some kind of a pronouncement in connection
with the operation of the courts in
connection with the Corona situation. I have
nothing yet to report, but as soon as I -- as
soon as I know, you'll know.

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All right. I'm going to start with the Defendants first, all right. I'm going to call this a Compliance Conference. If somebody wants to take the lead at the Defendants' end of the room, give me a report.

Nobody is jumping.

MS. PATTERSON: Your Honor, I don't know where you want to start. I can start by giving you a report on the jury questionnaire and jury protocol issues, which we discussed with the Court.

THE COURT: No, let's go with the -- you know what, I changed my mind. Go with the joint status report, that might be easier -- oh, wait. Anybody from Mallinckrodt?

MR. BUEKER: Yes, your Honor.

THE COURT: How could you see me?

There was a filing yesterday with the Security & Exchange Commission.

MR. BUEKER: Well, that filing wasn't made yesterday. The filing was attached to a filing of this Court yesterday; but, yes, your Honor.

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2 THE COURT: Why don't you tell me about
3 it.

4 MR. BUEKER: So, your Honor, the filing
5 was made with the Securities & Exchange
6 Commission, explains that we have reached a
7 global resolution of these matters, subject
8 to certain conditions, you know, including a
9 prearranged bankruptcy filing that would take
10 place in a month or two.

11 THE COURT: There's a dollar amount
12 attached to it?

13 MR. BUEKER: There is, your Honor.

14 THE COURT: And that dollar amount is
15 how much?

16 MR. BUEKER: 1.6 billion, your Honor.

17 THE COURT: And you said it's in
18 connection with a global resolution.

19 What is that -- when I say -- what does
20 that mean? We have cases pending here. Last
21 count in the MDL, 330 cases?

22 MR. HANLY: 3,000, your Honor.

23 THE COURT: 3,000. I'm off. My 10
24 table is wrong. Cases pending, I guess, in
25 47 states?

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MR. BUEKER: Sounds about -- Attorney General, yeah, support the Agreement, your Honor.

THE COURT: Let's assume, and this is for purposes of a conversation, let's assume that works out, that 1.6 billion dollars, and let's assume the Court gets a call, a correspondence from a county attorney who is represented here by one of the -- one of the Plaintiffs' firms, all right, and asks the Court, How do we benefit from it?

How would the Court or what would the Court do in order to answer that question?

MR. BUEKER: So I think what the Court needs to keep in mind --

THE COURT: Sandy -- go ahead. No, wait, wait, wait. This means coffee; this means please...

MR. BUEKER: I learned something today, your Honor. Thank you.

I think what the Court needs to keep in mind is how will the County benefit. The County will benefit because the reason Mallinckrodt entered into a global resolution

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2 the way it did was a group of AGs and a group
3 of the lead Plaintiffs' lawyers from the MDL
4 got together and had a negotiation so that
5 Mallinckrodt could proceed in a way that
6 would maximize the return, the amount of
7 money that could be paid to claimants in
8 these opioid cases.

9 So the County, you would answer, I would
10 think, benefits by the fact that the
11 alternative for Mallinckrodt, which would be
12 some kind of a free-fall bankruptcy without
13 the planning and without the maximization
14 that goes on under this plan. The County is
15 benefited here because there would be
16 additional consideration to the County.

17 THE COURT: Okay. Those two words,
18 "additional consideration." Go ahead.

19 MR. BUEKER: More than they'd otherwise
20 get if Mallinckrodt were just to plunge head
21 on into bankruptcy.

22 THE COURT: So let's say the call came
23 from the county attorney in Chenango County,
24 which I believe is one of the parties in this
25 case, and I repeat exactly what you said, and

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2 he or she listens to me and says, Judge, how
3 much?

4 MR. BUEKER: That's an issue, your
5 Honor, that remains to be worked out in the
6 Bankruptcy Court. There will be a procedure
7 for that that will be presided over to be
8 presumably a negotiated resolution of that.

9 THE COURT: In other words, help me out,
10 the Bankruptcy Court would hear claims?

11 MR. BUEKER: That's one way it could get
12 worked out in the bankruptcy. The other way
13 it could get worked out in the bankruptcy the
14 more -- I see Mr. Nachman is raising to
15 address this. He may be in a better position
16 to address it, so I will politely sit down,
17 but that could get worked out in the
18 bankruptcy by agreement.

19 THE COURT: Okay. Mr. Nachman, I
20 understand New York is not one of the 47
21 Attorney Generals that signed on for this
22 thing.

23 MR. NACHMAN: Two weeks ago that was
24 correct. As of today we are on a supporting
25 state -- we are a supporting state as of

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yesterday.

THE COURT: This is good news.

MR. NACHMAN: It is good news. And to your point, your Honor, the whole idea of the prearranged bankruptcy or prepackaged, depending on exactly what form it takes, is that allocation, which is what you are discussing is to be negotiated. It is expected that that's exactly what's taking place now. We know what the parameters, the economic parameters of the deal are. We've agreed that it's a better deal for everybody because it maximizes value compared to the only other plausible alternative of a free-fall bankruptcy and allocation is now to be finalized, but I should say that we don't write on a clean slate. There have been, as you might imagine, over the course of the past year around the country many, many discussions about allocation on a national level, as among the states, within New York, as among the counties, city, the state, so those arrangements are, if not finalized, very far progressed, and then the last piece

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of it is that we have to take into account other opioid claimants in the Mallinckrodt situation: personal injury claimants, hospitals and NAS infants who may have been born with addiction in utero. So that all still has to be arranged. So we can't give the answer to your Chenango, of the dollar amount.

What you can say for the moment is it's better than the alternative, and the idea is that in two months we'll have allocation all arranged, go into bankruptcy, and be out of bankruptcy officially.

THE COURT: Mr. Napoli, you have a problem with it, right?

MR. NAPOLI: I do, your Honor.

THE COURT: Tell me about it.

MR. NAPOLI: You know, I think it comes down to your question, How much is a county going to get? And none of these lawyers, whether it's the State of New York or the attorney for Mallinckrodt, can tell us.

All we know is that there is a potential for 1.6 billion for all of the Plaintiffs

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2 that have filed or even those -- we're not
3 even sure if it includes those that have not
4 filed. If it includes everybody, the best
5 case scenario for Nassau County would be 5
6 percent of the gross, which would be about 60
7 million would go to the State, and of that 60
8 million, maybe five percent would go to
9 Nassau County over a period of a number of
10 years. That's from a Defendant who is
11 probably significantly responsible. In the
12 order of Defendants it's probably Purdue and
13 then Mallinckrodt. They were the most
14 prolific distributors of sellers and
15 manufacturers of generic opioid.

16 So the County doesn't know how much
17 money they're going to get. They don't know
18 when they're going to get it. They don't
19 know who else is going to be included in this
20 process. We just heard from Mr. Nachman,
21 they still have to make a determination on PI
22 claimants, on hospital claimants, so they're
23 going to get a share as well.

24 THE COURT: I got it.

25 Mr. Hanly, you're on board with it?

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MR. HANLY: Yes, your Honor. I'm on
board --

THE COURT: And yet you're here today,
of course, on behalf of Suffolk County?

MR. HANLY: That's correct, Judge.

But the background to my support on
behalf of Suffolk is the year or so that I
spent as a PEC representative dealing with
the Mallinckrodt potential bankruptcy, and
the PEC spent millions of dollars on
financial analysts to analyze the condition
of Mallinckrodt and give us an assessment of
the potential that the company could survive
this litigation without filing for
bankruptcy, and the conclusion was it could
not.

Accordingly, and wearing my PEC hat, I
attempted to achieve the best deal that could
be achieved, and I have so advised Suffolk
County.

THE COURT: Okay. Mr. Juliano, today,
sometime today would you --

MR. JULIANO: Yeah, Judge, I had a
conference with Mr. Hanly, Mr. Napoli, Mr.

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O'Connor yesterday, and Mr. Nachman, with respect to what you just heard. Just one concern that I advised the Court, this is all dependant upon whether or not the specialty generics, which is not Mallinckrodt, PLC comes out of bankruptcy, then this agreement starts to fall into place.

However, there are concerns that Mr. Napoli had with respect to what's already been expended in this case to prepare for trial for the 20th. So I think that issue was left open, and we have not had a resolution, but I think today we have an opportunity, we're going to speak with Mallinckrodt, with Mr. Hanly, Mr. Nachman and Mr. Napoli, to see if that can be worked out or kind of revise some of this global terms to see whether or not we can take into consideration now Mr. Nachman participating and what his allocation with -- what the State's allocation would be with respect to any distribution. So I think we have that sometime this morning we'll get together, Judge, and try to work some of those out, and

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I'll advise the Court accordingly.

THE COURT: Okay.

MR. NAPOLI: Your Honor, if I can say two quick things. This deal that gets Mallinckrodt, PLC off the hook, I'm wearing my Nassau County hat, we've spent time and money preparing for trial. There's no guarantee that a bankruptcy is going to actually be filed, and to that point, we've said if a bankruptcy is not filed and we have to come back here and try this case again against Mallinckrodt sometime in the fall, we want to be made whole for that situation, and the company refused to take that into account.

So there is absolutely no benefit for Nassau County. As an advocate for Nassau County, we're at trial. The other 34,000 other counties and cities and municipalities are not at trial. What's best for Nassau County, having prepared for trial, is going forward.

Again, this prime actor in this crisis, not only around the country but here in New

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2 York. We're concerned about Nassau County,
3 in New York, that's the client I represent,
4 not the PEC.

5 MR. NACHMAN: Your Honor, can I just add
6 one thing for the record. You heard 1.6
7 billion. The deal also includes a 19.99
8 percent equity stake in the parenting
9 company. I just want --

10 MR. BUEKER: Yeah, I was going to add
11 that.

12 MR. JULIANO: It's a warrant. I
13 understand it's a warrant.

14 MR. NACHMAN: It's convertible into
15 19.99 percent or --

16 MR. BUEKER: And I would just say in
17 response to Mr. Napoli that his county is
18 going to benefit more by this deal going
19 through and by not forcing us to a trial that
20 results in a premature bankruptcy and
21 deprives everyone of what could be a
22 maximizing outcome.

23 THE COURT: Okay. I consider -- the
24 Court considers itself sufficiently informed.
25 We'll await the results of any kind of a

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conference you have with Mr. Juliano and/or further notification.

You know, almost as an op-ed comment, when we collectively look at the obligations we have to our principals, whether it's a Plaintiff or a Defendant, and consider the breath and scope of this litigation, this Court has been contacted by judges from other parts of the country involved in this litigation asking questions, in essence, comparing notes.

I wonder, given the extent, the breadth of this litigation, is the way we, and I say "we" collectively, we here in New York, we here in Ohio, we here in Louisiana, we here in South Carolina are approaching this thing is the right way to approach it.

If we're talking -- if we're using the word global in connection with any resolution that might be arrived at, can we ever really ever get -- this is a rhetorical question -- can we ever expect to get to a global resolution as long as there's this litigation, these cases pending throughout

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the country? I don't think so.

I'm open to suggestions as to a way to convene some sort of a conference which includes every jurisdiction, every state, Federal Court in connection with a wide open discussion and negotiation in connection with, again, a global resolution, as well as a means and method to distribute the -- distribute whatever funds are put aside in connection with a global resolution.

And you may recall, sometime ago at a conference the Court had suggested its own means and method in the event that number, that global number can be arrived at, and I stand by it, and it seems like a species of it has been adopted in some fashion by the Ohio court.

Again, that's just a comment because I don't -- I don't know how, if I was representing a Defendant in this case, how it's okay where we're done with New York, all right, but guess what? You got 48 other states we got to deal with.

I mean, my principal -- my principal

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would say, Okay, what is my exposure elsewhere and what documents do you have that I can rely on to say, you know, this is my payout? Again, strictly rhetorical. That's for you to decide and for you to make suggestions to the Court, any one of you, as to what this Court can do in connection with convention or the convening of a some sort of a meeting of national scope.

That aside, I have the joint pretrial order. All the open discovery issues are here to be conferenced without special masters.

Go to page 5, summary of any pending or forthcoming motions. Item number 1, as I indicated, is done. Awaiting final edits by the Court. Item number 2, done. Awaiting final edits from the Court.

I would like to say that the 18th summary judgment motions, to the extent that they were filed as follows. There's group applications: manufacturers, distributors and pharmacies. We have those. The Court's considered those.

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And then on top of the group applications, we have individual applications where the, where the Petitioner/Defendant indicates we're part of the group, Judge, but now these arguments that are unique to our situation. They have been looked at and those are in draft also. But the ones that I detailed this morning are really done but, again, I'd like to take a final look at it.

So items 3 and 4 are essentially done. Item 5, 6, and 7 are done. When I say "done" -- time out.

All right. The Court's in receipt of an administrative order. It was just handed to me, signed by the Honorable Vito Caruso.

I suggested, when I first came out today, that I expected to get some kind of a read from the administration in connection with the Carona situation, and I'll read it into the record. (READING:) Administrative order. Pursuant to the authority vested in me, and at the direction of the Honorable Lawrence K. Marks, Chief Judge -- Chief Administrative Judge, and in further

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consultation with the Honorable Jerry Garguilo -- he spelled my name wrong, by the way -- the following matter shall hereby be adjourned, as the trial court shall direct, and the County of Suffolk v. Purdue and the County of Nassau v. Purdue, New York versus Purdue, et al., and the index numbers.

I interpret this to mean that as the Court shall direct that pending, pending the outcome of the Carona situation, the Court can and shall reassign a trial date.

I'll tell you right now. I have no intention of going beyond the next case up for trial, which I believe is Tennessee in May. I'm not going to set a new date today. Just, by the way, this administrative order will be available for distribution, all right.

MR. NACHMAN: For clarification, your Honor, is the Court suggesting that subject to, obviously, discussing with the administrators of the court system, you anticipate setting a date sometime before the scheduled commencement of the Tennessee trial

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in May?

THE COURT: As soon as there's a lifting, a significant move, either by the Governor's office or OCA, in a New York City instant this Court is going to schedule a trial. This Court has been anxious to move this case to trial. You know, hindsight of course can be 20/20. But one of the things they asked me for yesterday in that phone conference was a roster of not so much the names of lawyers, but the places lawyers come from. And what I did is, just so you know, I didn't give what I believe is a complete roster, I gave the roster based upon the service, the service list on the joint status report, and Judge Caruso wanted that, and I gave him that.

When I say hindsight is 20/20, I have, what was suggested last conference, up to 200 lawyers coming here. Commissioner of Jurors has suggested bringing in 150, 150, 150 and 150, that adds up to what, 600 potential jurors. I suspect the risk of some kind of a communication of the illness was a

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2 significant consideration.

3 So here's what we're going to do. I
4 have motions all over the place right now. I
5 got a motion to preclude the State on the
6 BNE. Discovery, I have motions by
7 Mallinckrodt. We make use of the time we
8 have. Let's assume it's a month, I'm giving
9 you that assumption because that's what the
10 Court has in its mind, all right. If we make
11 use of that time, all of these discovery
12 disputes that you have now will be resolved
13 and nobody, let's say a month from now, can
14 come and say, Oh, Judge, guess what?

15 In connection with that, it will be
16 deemed an order of this Court that all
17 discovery is to be complete.

18 What's a month from today?

19 THE CLERK: April 13th.

20 THE COURT: I don't like that number.

21 THE CLERK: April the 14th.

22 THE COURT: That's my wife's birthday,
23 that's good. April 14th.

24 MR. SHKOLNIK: Judge, if I can be heard,
25 Hunter Shkolnik. What we've been seeing in

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2 the last couple of weeks is incessant service
3 of new discovery. Can we have an order that
4 this has got to stop, and we can cleanup what
5 has to be cleaned up? That we had a trial
6 date and this discovery in the last five
7 days --

8 THE COURT: I've seen it.

9 MR. SHKOLNIK: Can there be an order
10 that there's nothing new, that we had a date,
11 whatever was proper is served. Nothing new,
12 and whatever was too late, was too late.

13 THE COURT: As a matter of fact, on this
14 side of the table I think somebody suggested
15 opening up discovery based upon an article
16 that appeared in the newspaper, right? I
17 think it was you.

18 MR. NACHMAN: That's that table.

19 MR. SHKOLNIK: But if we can have some
20 type of --

21 THE COURT: Work out a -- if you don't
22 do it, the Court will. Work out something
23 with my special masters.

24 MR. NAPOLI: Can I make one more
25 suggestion? I know the Court said you don't

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2 want to set a date, but to have a control
3 date might make sense.

4 THE COURT: I'm going to give you a
5 control date. By the way, are you really
6 appearing in Louisiana once a week?

7 MR. NAPOLI: Me?

8 THE COURT: No, is this litigation going
9 on in Louisiana on a weekly basis?

10 MS. PATTERSON: It is going on in
11 Louisiana, your Honor, but not on a weekly
12 basis.

13 THE COURT: Okay. How frequently?

14 MS. PATTERSON: It's sort of ad hoc,
15 your Honor. The last hearing was about three
16 weeks ago, but I was here, so I had other
17 people there.

18 THE COURT: Okay.

19 MS. PATTERSON: Things are being pushed
20 back there. They had some issues with
21 discovery. They had a cyber attack.

22 THE COURT: There's only one Plaintiff
23 there?

24 MS. PATTERSON: The State, yes, your
25 Honor.

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THE COURT: Those are one of the courts we heard from.

Let's get something significant done. You'll meet with my special masters. Work out a drop dead date, a term of art, a cutoff date on the discovery. Mr. Nachman, work something. You face a motion tomorrow to, to preclude.

MR. NACHMAN: We have submitted, your Honor, that that's I think -- I mean, the motion is, especially in view of what's taken place over the past couple of days, effectively moot, and in any event -- or meritless, it should be withdrawn, actually, but on a number of bases, and we've submitted our papers.

Picking up on Mr. Shkolnik's suggestion, I would beseech your Honor, we'll work out a Stipulation with the special masters, but to set that cutoff on the basis that the trial was to proceed on March 20th.

As an example, you have a motion now filed by us, not yet responded to, about requests for admissions, which were served a

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2 day or two or three late. Another set of, I
3 don't know, 30, 40, 50 requests to admit
4 served late just piling on, piling on. We're
5 not -- we agree with your Honor, we should
6 use this time to clean up all these issues,
7 we can do so in an orderly fashion, but we're
8 not going to do so.

9 I said before that nature abhors a
10 vacuum. The Defendants abhor a vacuum. If
11 there is any space in time they will fill it
12 with what is now I think demonstratively
13 fruitless, irrelevant. They'll contest that.
14 They'll say it's very relevant; they'll say
15 it's critical; they'll say it goes to the
16 heart of due process; blah, blah, blah. But
17 in any event, unless your Honor puts that
18 date today as if --

19 THE COURT: I said I was.

20 MR. NACHMAN: Okay. Great.

21 THE COURT: I'll give you a chance to
22 come to an agreement. If you don't come to
23 an agreement, that's my job. You can make my
24 job a lot easier by coming to an agreement,
25 so do so. I don't want to get tied up in too

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much academic stuff, but there are some things I really would like to mention.

By the way, there's a lawyer who put some papers in, last name is Polster. Any relation to the judge? No? That person is not here, right? No relation to the judge, as far as any of you know?

MR. NACHMAN: It's a witness.

THE COURT: It's a witness. I saw the name. Okay. Who put in an affidavit?

MS. CONROY: Yes.

THE COURT: All right. All the pharmacies are here, correct? I'd like the pharmacies to meet with Mr. Juliano and with Plaintiffs' counsel. The Court has read all of the individual pharmacies' petitions, as well as the joint petition, and I would like that case discussed with Mr. Juliano.

Am I correct that Judge Polster issued one decision concerning a pharmacy, a pharmacy that's not in this case? Anybody? I'm going to assume, unless I hear otherwise.

MR. STOFFELMAYR: Your Honor, HBC is in the case in front of Judge Polster, not in

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this case.

THE COURT: That's right. Judge Polster rendered a decision in connection with a petition to dismiss.

MR. STOFFELMAYR: I'm sure he did. He's done that. There's a second pharmacy chain, not in this case, also in front of Judge Polster, called Discount Drug Mart.

THE COURT: I would like the pharmacies that are here today to meet with Mr. Juliano.

MR. SHKOLNIK: The two decisions that came down were later, later decisions. There were earlier ones I believe as to CVS and Walgreens, because they were part of the trial. He deferred the decisions on those other ones. You may have seen those late decisions that just came down in the last probably two months.

THE COURT: No, I hadn't seen those two. I saw the HBC decision. I read the HBC decision where he held HBC on a diversion claim I believe.

MR. SHKOLNIK: Those just came out, but the original summary judgments as to

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2 Walgreens and CVS, those came out quite some
3 time ago.

4 THE COURT: I have to find them. I
5 don't have them yet.

6 MR. SHKOLNIK: We can make them
7 available for the Court.

8 MR. SCHMIDT: Your Honor, Paul Schmidt,
9 for McKesson. We have a bunch of dates
10 coming up in terms of things like exhibits,
11 things like that, jury instructions. May we
12 work with the Plaintiffs to pick new dates
13 for those things?

14 THE COURT: Yes. And special masters
15 are here, too.

16 MR. SCHMIDT: Wonderful. Thank you.

17 THE COURT: Oh, by the way, maybe I do
18 have it. It's the MDL docket 2561, that's
19 what I had down.

20 MR. HANLY: 2804, your Honor.

21 THE COURT: Then I don't have it.

22 MR. SHKOLNIK: We'll get you the actual
23 orders.

24 THE COURT: Okay. The judge in Ohio
25 also wrote somewhat extensively on the de

1 In re Opioid 36

2 minimis claim that some Defendants are making
3 here, meaning their participation in the
4 actual commerce is very, very tiny, tiny and
5 as such they shouldn't be in the case. I got
6 that.

7 You can expect the decisions on the AOD
8 issues involving some of your clients to be
9 out soon. Statute of Limitations, expect
10 that soon.

11 Oh, yeah, when I referred to the cluster
12 motions before I was talking about 146, 147,
13 149, 151 and 160. I can tell you that's in
14 also in the editing stage.

15 I'm going to close the record. You'll
16 -- I'll be here, of course, for help. You'll
17 meet and confer with Mr. Juliano, the special
18 masters, and with your consent, I'm going to
19 ask Judge Murano to also take part in the
20 discovery issues. As you all know, Judge
21 Murano was presiding judge in Nassau County.
22 He's been very, very helpful to me. Unless I
23 hear an objection to that; any objection?
24 Going once, going twice...

25 The record will reflect there's been no

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objection to the reassignment of Judge Murano
this morning.

Mr. Nachman, do you want to get the last
word in, as always?

MR. NACHMAN: Yes. I just want to note
in light of the Court's statement about
decisions forthcoming, that with respect to
item number 9, their request for relief under
3216 for our reported noncompliance with the
BNE, we have responded to that yesterday with
our submission. I just want to be sure that
the Court has and considers that before
ruling.

We also, at the Court's direction, made
a formal motion on the reargument of the, of
the CSA authority issue of the Attorney
General to prosecute those claims. That
motion has now been formally made. I'm happy
to work out dates with the Defendants if they
need a response time, but it's been noticed.

MR. PYSER: Your Honor, we'll certainly
be responding to the motion to reargue on
that. It's been heard already, and unless
the Court is going to summarily deny it,

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2 having seen it four times already, we'll work
3 out a -- we'll work out a schedule. We're
4 happy to work with the special masters on
5 that as well.

6 MR. NAPOLI: Your Honor, I was unclear.
7 So April 14th is the day that we're pushing
8 everything back until?

9 THE COURT: Everybody is going to be
10 here on the 14th. I suspect certainly by
11 that time I'll get some word as to what I can
12 do. I'm telling you as soon as it becomes
13 apparent that this Court can proceed, it will
14 proceed. This Court is, as you know, is
15 anxious to proceed.

16 Thank you all. Meet with my -- our
17 special masters, and I'll be here for
18 recourse throughout the day.

19 Thank you.

20 CHORUS: Thank you, your Honor.

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C E R T I F I C A T I O N

I, Stephanie Casagrande Hague, CSR, RPR,
an Official Court Reporter of the State of
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